APPEAL, STAFF REPORT & RECOMMENDATION TO THE HEARINGS EXAMINER

Form DS1701

Project Name:	**Martin Lot Determination Appeal**
Case Number:	**APL2005-00019**
Location:	418 NW Hayes Road
Request:	The appeal is to the determination that parcels "F" and "G" in Book 34, Page 9 of surveys, tax lot 43,13 (252678) is one (1) legal lot of record.
Appeal Issues:	If a property owner sought to reduce the minimum lot size from 10 to 5 acres, within what time period was the property owner required to obtain information and demonstrate compliance with CCC 18.303.060A justifying the reduction in lot size, recognizing that this zoning provision was repealed in 1994?
Appellant:	Jackson, Jackson & Kurtz, Inc., P.S. Earl Jackson P.O. Box 340 Battle Ground, WA 98604 Ejackson@jik-law.com 360.687.3121
Property Owner:	Stephen & Helen Martin 418 NW Hayes Road Woodland, WA 98674
Hearing Examiner:	Richard Forester
Neighborhood Contact:	North Fork Lewis River Neighborhood Association; David Petersen, President; C/O Paul Sorenson; 4303 NW 402 Street Woodland, WA 98674;263-5353
Public Hearing Date:	November 10, 2005

RECOMMENDATION
Uphold Planning Director's Determination
Team Leader Initials: _____ Date Issued: October 26, 2005

Staff Contact: Terri Brooks, Extension 4885

Legal Description of Property:

Tax Lot 43,13 (252678) located in the NW ¼ of Section 10, Township 5 North, Range 1 East of the Willamette Meridian

Comp Plan Designation: Rural-10

Applicable Laws:

Clark County Unified Development Code Sections 40.540.020 [Land Divisions Introduction]; 40.210.020 [Rural Districts]; 40.510.030(E) [Appeal procedure]; 40.530.020(B) Establishment of Legal Nonconforming Status]; RCW58.17 and UDC 40.520.010; Current and past platting and zoning laws.

Project Description

Appeal of County staff's legal lot determination [MZR2005-00159] that concluded Lot 43,13 (252678) is one legal lot of record because the 5 acre surveyed portion was created in violation of zoning laws.

Background

The lot was shown as a 12.42 acre tract ("G") and a 5 acre tract ("F") on a survey recorded July 15, 1993 (Bk. 34 Pg. 9). Although that survey was not recorded until July 15, 1993 the survey work was performed in September 1992 according to the recorded survey. Because the actual survey work was done prior to April 19, 1993, the lots are in compliance with both state and local platting laws.

At that time the zoning for the site was Rural Farm. The Rural Farm zone required a minimum lot size of 10 acres. If favorable septic systems sites and slopes equal to or less then 15% at the drainfield site could be demonstrated to the Planning Director then the minimum lot size was reduced to 5 acres. However, Tract "F" never requested the Planning Director review, never obtained septic approval and did not meet the 10 acre lot size required because of those failures. Therefore the tract "F" cannot be recognized as a legal lot.

Appeal Issues and Staff Response

Issue #1:

CCC 18.303.060(A) did not require the applicant to show the Planning Director that the lot complied with favorable slopes and septic system tests before approval of 5 acre lots.

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Response to Issue #1:

CCC 18.303.060(A) stated : "Minimum lot area shall be ten (10) acres, except in those cases where the landowner can demonstrate favorable septic system tests and slopes, of equal or less than fifteen per-cent (15%) at the drainfield site, to the Planning Director; in which case, the minimum lot area shall be five (5) acres". There was no other way to make the determination to the Planning Director other than requesting a Planning Director Review. In 1992, out of 54 applications for Planning Director Reviews, 27 were for creating 5 acre lots in the RF zone district. In 1993, of 88 total applications, 32 for reductions in the rural farm district. Regardless of whether a review was required at that time or not, no

demonstration was made to the then planning director. The 5 acre lot apparently never had and continues to not have an approved septic system site on it. There was some information submitted with the lot determination that a septic system approval had been obtained for a 7 bedroom residence that consisted of 2 homes to be located on Tract "G" but nothing showing a septic had been approved on Tract "F". This is further documented by the e-mail of 9/8/2005 from Reuel Emery of the Health Department (Exhibit 15) and faxed paperwork from Mr. Emery in Exhibit 13. The case has still not been made that a septic system approval has been obtained at slopes under 15% and since the zone changed 10 years ago, staff felt that is was simply too late (Exhibits 14 and 17). Staff understands the previous owner may have meant to do it but didn't.

Yesterday, staff unearthed a 2001 e-mail from Rich Carson, Community Development Manager regarding the Groves Public Interest Exception application (Exhibit 18). In it, he directed staff to approve a lot in the public interest because it was an existing lot that is the same size as those surrounding it, it had been taxed as a legally buildable lot and he felt the applicants met the criteria as innocent purchasers. They also had obtained septic approval which showed slopes at the drainfield at under 15% and paid full value for a 5 acre buildable lot. This was also in the RF zone district. The facts in that case are different t from those in the present case.

Issue #2:

There was no discretion allowed the Planning Director when approving 5 acre lots when the landowner demonstrated that they could meet the criteria for creating the 5 acre lots.

Response to Issue #2:

Staff agrees with the appellant. Once it was demonstrated that they met the requirement that they had obtained septic approval on slopes less than 15% at the drainfield site, there was no discretion whether the 5 acre lot could be approved. But the demonstration had to occur while the zoning regulations allowed it. In this case the regulations were changed 10 years ago so it is too late to request recognition. If the intent was to continue to recognize these cases, the regulations would not have been repealed.

Issue #3:

If there are favorable slopes and septic system tests, is there a compelling public interest to require the lots to have undergone a Planning Director Review prior to approval?

Response to Issue #3:

Neither state law nor county code requires a "compelling interest" before the county can administer its code. Moreover, because these lots are nonconforming, state law favors bringing nonconforming lots into compliance. Assuring that lots are created that comply with applicable standards is in the public interest so that land use goals and objectives implemented by those standards are achieved.

Issue #4:

Staff misinterpreted the minimum lot size in the RF zone district.

Response to Issue #4:

Staff has attempted to administer the code consistently. A lot smaller than 10 acres is an exception in the RF zone. In fact, Clark County gave the same interpretation when this

issue was presented by the same law firm for property owned by the law firm's family (Exhibit 17).

Issue #5:

Did staff fail to distinguish between land division and zoning ordinances and did the applicant have to show favorable septic tests prior to division?

Response to Issue #5:

Platting and zoning are viewed separately. The division of property may comply with platting and not zoning (In 1992, the creation of four 5 acre lots in the Agriculture-20 district would comply with platting but not zoning) or the reverse may be true (division of 5 acres into one acre lots in the R1-75 district which complies with zoning but not platting). Zoning is an integral part of platting; they are inherently related.

The applicant was not required to show favorable percs prior to the division but was required to make this demonstration before a reduced lot size of 5 acres was effected and while the zoning allowed the reduction.

Issue #6:

Staff ignored the definition of "lot of record" in the current zoning code.

Response to Issue #6:

Staff did not ignore the definition of lot of record because a lot of record had to be in compliance with both platting and zoning laws when the parcel was originally created. If the parcel did not or could not demonstrate slopes at an approved drainfield site of under 15% at the time the parcel was originally created then it was not in compliance with zoning. Had the code been intended to continue to recognize lots in this manner, it would continue to include such standards.

CONCLUSION

RECOMMENDATION

Based on the above findings and information in the record, the Development Services Manager recommends the Hearings Examiner DENY the appeal and uphold the Planning Director's Determination.